

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NEW MEXICO

VOTER REFERENCE FOUNDATION,  
LLC and HOLLY STEINBERG,

Plaintiffs,

v.

Case No: 1:22-cv-00222-JB-KK

HECTOR BALDERAS, in his official capacity as  
New Mexico Attorney General, and MAGGIE  
TOULOUSE OLIVER, in her official capacity as  
New Mexico Secretary of State,

Defendants.

DEFENDANT MAGGIE TOULOUSE OLIVER'S RESPONSE TO PLAINTIFF VOTER  
REFERENCE FOUNDATION'S FIRST INTERROGATORIES,  
REQUESTS FOR PRODUCTION, AND REQUESTS FOR ADMISSION

Pursuant to Rules 33, 34, and 36 of the Federal Rules of Civil Procedure, Defendant Maggie Toulouse Oliver, in her official capacity as New Mexico Secretary of State ("The Secretary"), responds to Plaintiff Voter Reference Foundation's First Interrogatories, First Requests for the Production of Documents, and First Requests to Admit ("Plaintiff's First Set of Discovery"). The Secretary's responses shall be without prejudice to any objections she may have to the relevance or admissibility of any response at any hearing, trial, or on summary judgment in this Action. The Secretary's investigation and development of all facts and circumstances related to this Action is

**INTERROGATORY NO. 2:** State whether You maintain a “file maintenance list” as that term is defined under N.M.S.A 1-5-2, and, if so, how that record differs from the record requested by VRF in its May 27, 2022 request for voter data.

**RESPONSE:**

The Secretary notes that discovery is ongoing and more facts may be ascertained that are currently unknown to The Secretary. Accordingly, The Secretary reserves the right to supplement this response.

The Secretary objects to Interrogatory No. 2 as requiring a legal conclusion as to the distinction between a term defined under New Mexico statutes and the particular information requested in VRF’s May 27, 2022 request for voter data.

Without waiving, and subject to, the foregoing General and Specific Objections, The Secretary maintains a “file maintenance list” as that term is defined under N.M.S.A. 1978, Sec. 1-5-

2. In its May 27, 2022 request for voter data, VRF requested

A complete list, by county/precinct, of any registered voters who cast a ballot in the November 3, 2020 General Election, who have been subsequently placed in an inactive, canceled, deleted, removed (or any registration status other than active) status, or any voter that has been removed or deleted from the voter rolls between November 3, 2020 and April 13, 2021, including total count of same

As defined in Sec. 1-5-2(G), a “file maintenance list” means “any prepared listing that reflects additions, deletions or changes to the voter file.” Whereas the information requested in VRF’s May 27 request sought the creation of a record comprised of a highly specific subsets of voters limited to a specific period of time. Such a record was not previously created or maintained by The Secretary and thus cannot be provided for inspection by The Secretary.

**INTERROGATORY NO. 3:** Identify each person whom you contend has canceled his or her New Mexico voting registration, or who has become the subject of unwanted solicitation, harassment, or abuse, because VRF shared voter data with the public on VRF's website, and identify all documents or other information upon which you base that contention.

**RESPONSE:**

The Secretary notes that discovery is ongoing and more facts may be ascertained that are currently unknown to The Secretary. Accordingly, The Secretary reserves the right to supplement this response.

The Secretary objects on to Interrogatory No. 3 as outside the scope of relevance to the current action. *See* Fed. R. Civ. P. 26(b)(1). The names of the individuals who have canceled their voter registration or who have become the subject of unwanted solicitation, harassment, or abuse are irrelevant and beyond the scope of Plaintiffs' causes of action. The Secretary further objects on the grounds that the State has a compelling interest in protecting the privacy of its citizens. Such privacy is not forfeited because a citizen registers to vote, much less because a citizen withdraws from voter registration after his or her voter registration information has been improperly published.

Without waiving, and subject to, the foregoing General and Specific Objections, The Secretary states that 25 people have submitted complaints to The Secretary concerning their voter registration information being publicly available on Plaintiff's website. Certain complaints express distress for potential solicitation, harassment, or abuse as a result of their information being published, and certain complaints express an interest in withdrawing voter registration if the

information is not removed. See Bates Nos. SOS00031-SOS00038 for documentation of these complaints.

**INTERROGATORY NO. 4:** Identify all facts and documents relating to VRF's manipulation of or attempt to manipulate New Mexico voter data.

**RESPONSE:**

The Secretary notes that discovery is ongoing and more facts may be ascertained that are currently unknown to The Secretary. Accordingly, The Secretary reserves the right to supplement this response and will supplement this response as additional information is gathered.

Without waiving, and subject to, the foregoing General and Specific Objections, The Secretary states it is not in possession of any such facts or documents at this time.

**RESPONSES AND OBJECTIONS TO SPECIFIC REQUESTS FOR ADMISSION**

**REQUEST FOR ADMISSION NO. 1:** Admit that You did not respond to VRF's February, 2022 request for voter data because the Attorney General, or someone within the Attorney General's Office or otherwise acting on behalf of the Attorney General or Attorney General's Office, advised You not to respond to the request.

**Response:**

The Secretary objects to Request for Admission No. 1 on the grounds that it seeks information protected by the attorney-client privilege. "The [attorney-client] privilege protects confidential communications by a client to an attorney made in order to obtain legal assistance from the attorney in his capacity as legal advisor." *Vondrak v. City of Las Cruces*, 760 F.Supp. 2d 1170, 1173 (D.N.M. 2009) (internal quotations and citations omitted). "The attorney-client privilege applies to 'confidential communications made for the purpose of facilitating the rendition of

this response and will supplement this response as additional information is gathered. The Secretary is not in possession of any such documentation at this time.

**REQUEST FOR PRODUCTION NO. 6:** Produce all that evidence, refer to, or relate to any instance in which a New Mexico resident has been subjected to unwanted solicitations, harassment, or abuse because of any action by VRF.

**RESPONSE:**

The Secretary notes that discovery is ongoing and more facts may be ascertained that are currently unknown to The Secretary. Accordingly, The Secretary deserves the right to supplement this response and will supplement this response as additional information is gathered.

See Bates Nos. SOS00031-SOS00038.

Respectfully submitted,

By: /s/ Jeff Dan Herrera

Erin Lecocq  
Jeff D. Herrera  
Office of the New Mexico Attorney General  
408 Galisteo Street  
Santa Fe, NM 87501  
Tel.: (505) 490-4060  
Fax: (505) 490-4881  
elecocq@nmag.gov  
jherrera@nmag.gov